

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PHILLIP DELGADILLO,

**Plaintiff,
vs.**

**NEW MEXICO CORRECTIONS
DEPARTMENT**

Defendant.

**COMPLAINT FOR DAMAGES DUE TO THE OVER DETENTION OF
PHILLIP DELGADILLO**

Plaintiff, Phillip Delgadillo, by and through his attorneys, The Law Office of Frances Crockett and Law Office of Kari Morrissey, alleges and complains as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. At all times material herein, Plaintiff was an inmate incarcerated under the custody and control of Defendant.
2. At this time Plaintiff is not incarcerated.
3. Defendant, New Mexico Corrections Department, is a governmental entity organized and operating subject to the laws of the State of New Mexico and the Federal Government.
4. Immunity is waived for the actions described herein under Sections 41-4-6 (operation of a building) and 41-4-12 (deprivation of rights under state and federal constitution).
5. This is a civil action brought pursuant to 42 U.S.C. § 1983 in order to obtain declaratory relief and monetary damages as a result of the Defendant having unlawfully

constrained the Plaintiff of his liberty by keeping him in custody for 89 days beyond when his incarceration should have terminated.

6. This Court has jurisdiction over these issues pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343(a)(3) (42 U.S.C. §1983 jurisdiction).

7. Given the above, jurisdiction and venue are proper.

II. FACTUAL BACKGROUND

8. On July 26, 2012 Mr. Delgadillo was sentenced to the Department of Corrections for the criminal offenses of Criminal Sexual Penetration in the Fourth Degree (two counts) and Child Solicitation by Electronic Communication Device (two counts) in Cause number D-503-CR-200900029 after violating his probation.

9. This sentence was to be served concurrently to any sentence being served in D01027-CR-200800015.

10. Mr. Delgadillo was sentenced to six years and was given credit for four years and 76 days.

11. Mr. Delgadillo was ordered to serve one year and 289 days beginning October 21, 2011.

12. Mr. Delgadillo's release date was May 2, 2013. Mr. Delgadillo was not released until July 30, 2013.

13. Mr. Delgadillo was released after a hearing before Judge Shuler-Gray on July 23, 2013.

14. At this hearing Randy Dorman of the New Mexico Department of Corrections appeared telephonically and indicated that Mr. Delgadillo was not being released as the Department of Corrections was under the impression that Mr. Delgadillo was subject to 5-20 year parole and were holding him pending the approval of a parole plan.

15. When in fact, as of May 2, 2013 Mr. Delgadillo had completed one year of parole inside

and **was not** subject to 5-20 year parole for his offenses.

16. After a hearing on the matter Judge Shuler-Gray determined that Mr. Delgadillo was not subject to 5-20 year parole and was to be released immediately.

17. Judge Shuler-Gray issued an order to this effect on July 26, 2013.

18. Mr. Delgadillo was released on July 30, 2013 pursuant to the Court's release order.

19. As a result Mr. Delgadillo was held by the New Mexico Department of Corrections without legal authority for eighty-nine days.

20. Mr. Delgadillo's Judgment and Sentence ("J&S") documents are all readily available by the Defendant.

21. Defendant is responsible for the J&S interpretation and certification as well as any audits regarding Mr. Delgadillo time in Defendant's custody.

III. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF- (§1983 EIGHTH AMENDMENT VIOLATION-CRUEL AND UNUSUAL PUNISHMENT)

22. Plaintiff adopts and incorporates all other paragraphs of this Complaint for purposes of this claim.

23. By Defendant's deliberate indifference in failing to properly calculate Mr. Delgadillo's sentence and release, Mr. Delgadillo was not released from incarceration on May 2, 2013. Defendant was responsible for Mr. Delgadillo's having been restrained of his liberty by Defendant's supervision for 89 days beyond the date on which the law required his incarceration to terminate, in violation of Mr. Delgadillo's right to be free from cruel and unusual punishment, guaranteed by the Eighth Amendment to the United States and New Mexico Constitution.

SECOND CLAIM FOR RELIEF- (§1983 FOURTEENTH AMENDMENT VIOLATION-LOSS OF LIBERTY WITHOUT DUE PROCESS OF LAW)

24. Plaintiff adopts and incorporates all other paragraphs of this Complaint for purposes of this claim.

25. By requiring that Mr. Delgadillo submit to infringements on his liberty beyond the proper conclusion of his sentence, Defendant was responsible for Mr. Delgadillo having been deprived of his liberty without due process of law, in violation of his rights under the Fourteenth Amendment to the United States and New Mexico Constitution.

THIRD CLAIM FOR RELIEF- (§1983 FOURTH AMENDMENT VIOLATION-ILLEGAL SEIZURE)

26. Plaintiff adopts and incorporates all other paragraphs of this Complaint for purposes of this claim.

27. By requiring that Mr. Delgadillo remain in custody beyond the proper conclusion of his sentence, Defendant was responsible for Mr. Delgadillo having been deprived of his right to be free from illegal seizures of his person in violation of his rights under the Fourth Amendment to the United States and New Mexico Constitution.

FOURTH CLAIM FOR RELIEF- (STATE TORT CLAIMS - FALSE IMPRISONMENT, ILLEGAL SEIZURE, AND FALSE ARREST)

28. Plaintiff hereby incorporates by reference the allegations of the previous paragraphs as though fully set forth herein.

29. The actions of Defendants were not justified or privileged under state law.

30. By requiring that Mr. Delgadillo remain in custody beyond the proper conclusion of his sentence, Defendant falsely imprisoned, seized Plaintiff, and deprived Plaintiff of rights, privileges and immunities secured as a matter of State and Federal Constitution.

31. Defendant's detention of Plaintiff constitutes false arrest and false imprisonment.

IV. DAMAGES.

32. Plaintiff hereby incorporates by reference the allegations of the previous paragraphs as though fully set forth herein.

33. As a direct and proximate result of the Defendant's conduct set forth above, Plaintiff suffered and sustained loss of liberty, economic losses, pain and suffering, mental distress, anxiety, and emotional suffering, and other damages for which he should be compensated in an amount deemed just by the Court.

34. Defendants' conduct was willful, wanton, malicious, and in utter disregard and deliberate indifference for Plaintiff's legal rights, warranting imposition of punitive damages.

35. Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to ask the court for reasonable attorney's fees and litigation expenses if Plaintiff prevails.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:


- A. Judgment against Defendant on all claims;
- B. Monetary damages, including punitive damages, in an amount to be determined at trial;
- C. An award of his attorneys' fees, costs, and expenses in bringing this lawsuit;

and

D. All other relief that law and justice require.

Respectfully submitted,

LAW OFFICE OF FRANCES CROCKETT



Frances Carpenter
118 Wellesley Drive SE
Albuquerque, NM 87106
Phone: (505) 314-8883
Fax: (505) 2635-1319
Attorney for Plaintiff

- and -

/s/ Kari T. Morrissey
Kari T. Morrissey
LAW OFFICE OF KARI MORRISSEY
2501 Rio Grande Blvd., NW, Suite B
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(505) 244-0950
(505) 244-0952 Fax
Attorney for Plaintiff

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Phillip Delgadillo

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Law Office of Frances Crockett, Frances Carpenter, 118 Wellesley Drive
SE, Albuquerque, NM 87106, 505.314.8884; Law Office of Kari
Morrissey, Kari T. Morrissey, 2501 Rio Grande Blvd., NW Suite B,
Albuque

DEFENDANTS

New Mexico Corrections Department

County of Residence of First Listed Defendant Santa Fe
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 1983

Brief description of cause:
Complaint for Damages Due to Over Detention

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/12/2013

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE